The evidence, the sufficiency of which is not questioned, is detailed in the opinion below (Pet. App. 2a-6a) and need not be restated. Petitioner's sole challenge is to the admissibility of statements made by him to an F.B.I. agent denying that he knew certain individuals whose photographs were shown to him. Independent evidence showed that such individuals were petitioner's accomplices in the hijacking offense (Pet. 2; Pet. App. 22a-24a). The statements were made after the return of the indictment, in the absence of counsel and on the day of and immediately following petitioner's arrest.[1] Petitioner's principal contention (Pet. 3-6) is that the statements were inadmissible under *Massiah* v. *United States*, 377 U.S. 201, as they were obtained in the absence of counsel. That decision, however, is inapposite. The statements there in issue were made to a confederate of the accused, without knowledge that a government agent was overhearing them with the confederate's consent, and no question of waiver was involved. Here the statements were made to one known by petitioner to be an agent after he had been advised of and had expressly waived his rights. Before submitting to questioning, petitioner read and signed a statement apprising him of his rights and explicitly waived them, in accordance with the requirements of *Miranda* v. *Arizona*, 384 U.S. 436 (Pet.

[1] So far as appears, petitioner had not retained counsel at the time of his statements. The indictment, returned five days previously, had been sealed during the interval (R. 1).

App. 22a-23a).[2] The challenged statements were therefore admissible under the rule of that decision. Moreover, petitioner did not object at the trial to the admission of the challenged statements. It is therefore not open to him to object to them now for the first time. Fed. R. Crim. Proc. 51.

Noting this Court's observation in *Miranda* that if interrogation is undertaken without the presence of an attorney and a statement is taken a "heavy burden" rests on the government to show that the defendant knowingly and intelligently waived his rights (384 U.S. at 475), petitioner alternatively argues that the government failed to sustain that burden in this case (Pet. 6-7). However, by reading *and signing* the waiver instrument, in which his rights were articulated with clarity and precision, petitioner gave appropriate and adequate indication that his waiver was intelligent and deliberate. At

---

[2] The statement (Gov. Ex. 15), a copy of which is being lodged herewith, advised petitioner that he had a right to remain silent; that anything he said could be used against him in court; that he had a right to talk to a lawyer for advice before he was asked any questions and to have the lawyer with him during questioning; that if he could not afford a lawyer one would be appointed for him before any questioning if he wished; and that if he decided to answer questions without a lawyer present he would have the right to stop answering at any time he wished until he had talked to a lawyer. Under a heading entitled "Waiver of Rights," the signed statement read: "I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me."

all events, since as noted above petitioner did not raise the admissibility issue at the trial, and by failing to do so precluded the development of possible additional evidence showing even more conclusively the intelligence and deliberateness of his action, there is no basis for challenging the sufficiency of the waiver at this time.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1970.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1970 398535 39